

Supreme Court, U. S.

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MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1077

VALLEY INTERNATIONAL PROPERTIES, INC.,
Appellant

v.

LOS CAMPEONES, INC.,
Appellee

On Appeal from the Supreme Court of Texas

**MOTION TO AFFIRM THE JUDGMENT BELOW
OR IN THE ALTERNATIVE TO DISMISS APPEAL**

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**MOTION TO AFFIRM THE JUDGMENT BELOW
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To The Supreme Court of the United States:

Comes now LOS CAMPEONES, INC., appellee in the above cause, and moves the Court to affirm the judgment below on the ground that it is manifest that the case presents no substantial federal question not previously disposed of by this Court or alternatively to dismiss the appeal for lack of a substantial federal question.

STATEMENT

In its anxiety for brevity, appellant fails to include in its jurisdictional statement or its appendices a copy or the terms of the Judgment of the trial court affirmed by the judgment appealed from. Such judgment is copied in its entirety in Appendix A to this Motion. In pertinent part, this judgment by the 197th Judicial District Court of Cameron County, Texas, ordering Valley International Properties, Inc., to hold a special annual shareholders meeting, finds that appellee, Los Campeones, Inc., is a shareholder of Valley International Properties, Inc., and that no annual shareholders' meeting had been held within thirteen months prior to the filing of the original application on July 25, 1977. Its decree includes the following two paragraphs:

"IT IS THEREFORE ORDERED:

"1. A special annual shareholders' meeting of Valley International Properties, Inc., shall be held in the Los Compadres Ballroom of Valley International Country Club, located at the intersection of Highway 77 at F.M. Road 802 in Cameron County, Texas, in or near the City of Brownsville, Texas, on Monday, September 26, 1977, at 2:00 o'clock p.m.

. . .

(Three numbered paragraphs relate to details of notice and the like.)

"IT IS FURTHER ORDERED that all matters contained herein *are subject to the review and approval of the Judge sitting in the proceedings in the District Court of the United States for the Southern District of Texas, Brownsville Division, in Causes in Bankruptcy numbered 76-B-46 and 76-B-47.*" Transcript of Trial Court Proceedings, Page 21. (Parentheses and emphasis supplied)

Before the day fixed by the Court judgment for the meeting, the trial court's Order was submitted to the Bankruptcy Court, which, "having considered the arguments of counsel and having reviewed the declaratory portions of" the order, and having found "that it approves the decretal portions set forth in Paragraphs 1, 2 and 3 of" the order, on September 21, 1977, entered the following judgment:

"IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the Order of the District Court of Cameron County, Texas, 197th Judicial District, entered in Cause No. 77-1563-C, annexed hereto as Exhibit 'A', is approved only as to the decretal paragraphs of said Order set forth above."

A copy of the order of the Bankruptcy Court, omitting its attached copy of the above-quoted judgment of the 197th District Court, is set out as Appendix B to this Motion.

Appellant urges the significance of a claimed federal question here, in part, on the ground that "appellee attempted this without the prior consent or knowledge of the Bankruptcy Court." (Jurisdictional Statement, Page 9). It also argues "that the Bankruptcy Court was never given opportunity to determine whether or not a shareholders' meeting, under the circumstances then existing, would have interfered with the arrangement." (Id. 18)

Appellant's suggestion that the Bankruptcy Court never had an opportunity to determine whether or not the shareholders' meeting would interfere with the arrangement proceeding, is contradicted by the Order of the Bankruptcy Court, dated September 21, 1977, striking the motion of appellant to hold Los Campeones, Inc., in

contempt for bringing this proceeding. Appendix C to this Motion, Transcript in the Texas Court of Civil Appeals, p. 23. The Chapter XI proceeding in the Bankruptcy Court, claimed by Appellant to preempt any state court jurisdiction, was dismissed on November 30, 1977 (Jurisdictional Statement, p. 7)

This proceeding was treated by the courts below as one requiring the Court to determine whether appellant owned and could exercise its rights as a shareholder in any shareholders' meeting. In its Order, Appendix D hereto, granting supersedeas, dated September 26, 1977, the trial court affirmatively ordered that "Los Campeones, Inc., its attorneys, agents and employees, are stayed from calling or holding a shareholders' meeting of Valley International Properties, Inc., until ten days after said Judgment becomes final." (Tr. 24, 25) The Judgment thus has become one in which the finality of the determinations by the lower courts that appellant under State law has good title to the stock and its benefits is being delayed by this appeal, asserting that the Texas law requiring appellant to hold a shareholders' meeting violates the Constitution of the United States. The judgment, as reflected by the opinion below has been affirmed by the Court of Civil Appeals, with review denied by the Supreme Court of Texas.

ANALYSIS OF POSITIONS

As stated in the opinion of the Court of Civil Appeals (Appellant's Jurisdictional Statement, Appendix E, Page 5), this is "an embittered struggle" between management and stockholders of Valley International Properties, Inc., to gain "managerial control." Appellant's Jurisdictional Statement, Pages 9 and 21, reflects that the

real purpose of this appeal is to continue the control of the corporation by management who obviously do not expect to remain in office after a vote of the next annual or other meeting of the shareholders!¹

It is unlikely that the Texas Legislature intended that the management of the corporation could appeal from a "summary" order compelling them to carry out their legal and by-law obligations to hold annual meetings of the shareholders. (By-Laws, see Defendant's Exhibit 11, Statement of Facts, Vol. IV). The trial judge, with the apparent sympathy of the Court of Civil Appeals, converted the case to one involving a contest to determine ownership of the majority of the corporate shares and the right of Los Campeones, Inc., to vote the same at any shareholders' meeting. This is demonstrated by the Court's injunction against the participation by Los Campeones, Inc., in any shareholders' meeting pending the finality of the judgment presently pending before this Court. It is also clear in the arrangements made in the trial court wherein appellant urged upon the trial court the full trial of all of the rights of the shareholders (Vol. I, S.F. 127, 132). This may justify the patience of the Texas courts in spending the last eighteen months in laboring such questions on appeal and thereby delaying for that interval a shareholders' meeting already delayed more than thirteen months.

Now that the Texas courts have finally recognized and confirmed appellee's ownership to the shares—obviously not a concern of the federal authorities in Chap-

1. It is doubted that there are many cases where management has as effectively overcome the wishes of shareholders during an interval as long as has been required for the disposition of this case to this point.

ter XI bankruptcy proceedings or otherwise—and after the exhaustion of Texas appellate process, during which the bankruptcy proceeding has long been dismissed for want of prosecution by the officers of Valley International Properties, Inc., in charge of it—it seems unlikely that this Court should regard the questions now involved as justifying the waste of time involved in giving lengthy and careful attention to the claim of substantial federal question.

When it is recognized that this is in reality a contest *between* the majority *shareholder* of a corporation and *its officers* over the right of the officers to manage the corporation, the clear propriety and constitutionality of Article 2.24-B of the Texas Business Corporation Act as applied to appellant in this case, appears. The statute is totally consistent with Rule 11-44 of the Rules of Bankruptcy Procedure, providing a stay of proceedings “*against the debtor*,” which does not contemplate any stay of contests between shareholders and management nor condone management’s interference with the rights of shareholders.

The Federal system clearly recognizes the State protected right of the shareholders to elect new directors, even in reorganization proceedings under Chapter X. *In re: Bush Terminal Co.*, 78 F.2d 162 (2d Circuit), quoted *infra*. Chapter XI makes no provision for control by the Bankruptcy Court of the identity of directors, although Chapter X does so provide. This would clearly demonstrate that the Congress did not mean for the Bankruptcy Court in Chapter XI proceedings, as here involved, to supervise the identity or election of directors.

It thus seems clear that, as a matter of substance, disregarding the formalities of the style of the proceeding, this is in no sense a proceeding *against* the corporation *but is one against a president*, who refuses to recognize the rights of the shareholders to have the corporate affairs managed by officers elected by directors of their choice.² The latter, under the settled law as stated in *Bush Terminal*, *supra*, “have the right to be adequately represented in the conduct of the debtor’s affairs, especially in such an important matter as the reorganization of the debtor.” If this right of the shareholders is recognized in Chapter X proceedings, it is even more clearly settled in Chapter XI proceedings, where the Court has no jurisdiction of the shareholders. *In re: Texas Consumer Finance Corporation*, 480 F.2d 1261 (1973), 7th Circuit, and authorities therein cited.

Preliminarily, then, it is the appellee’s position that the questions presented by the appeal as stated in Pages 5 ff. of Appellant’s Jurisdictional Statement should be answered that Article 2.24-B of the Texas Business Corporation Act is valid and constitutional as applied to this cause because the case does not involve any property of the debtor, that Rule 11-44 stays no proceeding by the shareholders against the officers of the corporation to require them to hold a shareholders’ meeting, and that the automatic stay of Rule 11-44 has no application to this case.

If these views are not acceptable, even if Rule 11-44 of the Rules of Bankruptcy Procedure is held to apply to the proceedings authorized by Texas Article 2.24-B of the Texas Business Corporation Act, it appears that the

2. There has been no directors’ meeting since February, 1974. Vol. I, S.F. 45, 46.

approval by the Bankruptcy Court of the order of the trial court here appealed from would satisfy the requirements of that rule.

ARGUMENT

The Texas statute upon which appellee's naive application for an order compelling the officers of Valley International Properties, Inc., to have an annual shareholders' meeting was based, provides in effect that absent an annual meeting within any 13-month period, any court of competent jurisdiction may, on application of any shareholder, *summarily* order a meeting to be held. (Appellee's Jurisdictional Statement, Page 7) Such an order was entered by the 197th Judicial District Court—the Texas court of general jurisdiction—on July 25, 1977, ordering a meeting to be held on September 2, 1977. In the intervening eighteen months, time for two additional meetings of shareholders has passed. During that interval the bankruptcy proceeding has been dismissed for more than a year, but the officers of Valley International Properties, Inc., claim immunity from the holding of a shareholders' meeting to determine their right to continue their use or misuse of the properties of the company because, they say, at the time of the entry of the original order of the District Court of Cameron County, it had no jurisdiction of the subject matter of the suit.

On its face, this situation appears preposterous. The real purpose of appellant's appeal to this Court is to upset a judgment of the Court of Civil Appeals for the Thirteenth Supreme Judicial District of Texas rendered on June 15, 1978, decreeing that ten days after the finality of its judgment Valley International Properties, Inc., at

the behest of its shareholders, may have a shareholders' meeting. The Texas court disposed of the matter, sustaining the appellee's title to its stock, and the only matter now before the Supreme Court of the United States is whether or not at the time of the rendition of that judgment it had jurisdiction so to do against the claim of federal supremacy.

We urge the following propositions to support this Motion:

PROPOSITIONS

First Proposition

The Court of Civil Appeals properly held that at the time the institution of this suit the courts of Texas had jurisdiction to pass upon the rights of appellee to have a shareholders' meeting of Valley International Properties, Inc.

Second Proposition

If the federal bankruptcy legislation had preempted the right to order or stay the holding of shareholders' meetings, the construction given the State statute conferring such jurisdiction satisfied the requirements of federal supremacy by making the order to hold a meeting conditioned upon and effective after approval by the Bankruptcy Court.

Third Proposition

The bankruptcy proceeding having been dismissed by the Bankruptcy Court during the pendency of the appeal from the trial court judgment in issue,

there is no longer any significant federal question presented as to the jurisdictional questions raised by appellant.

Fourth Proposition

The order of the Court of Civil Appeals, affirming a judgment authorizing the holding of a shareholders' meeting of Valley International Properties ten days after the finality of that judgment rendered on June 15, 1978, rests on an adequate non-federal basis, there being no current bankruptcy proceeding involving Valley International Properties, Inc.

ARGUMENT UNDER ALL PROPOSITIONS

The logic by which the Texas Court of Civil Appeals reached its conclusion that subject matter jurisdiction rested in the trial court, appears impeccable. Without here repeating its authorities, the reasoning of the Court is that the mere pendency of a Chapter XI proceeding does not divest a State court of jurisdiction. A State claim must interfere with the jurisdiction of the Bankruptcy Court in order to preclude a State court's jurisdiction. The Bankruptcy Court has no jurisdiction over the meetings of shareholders of the debtor unless it wishes to enjoin a shareholders' meeting which will interfere with the administration of the debtor's estate. In the case at bar, the Bankruptcy Judge signed an order approving the holding of the ordered meeting. The mere fact that an election and possible installation of new directors might ultimately have some indirect effect on the arrangement does not confer jurisdiction on the Bankruptcy Court, and Rule 11-44 did not preclude the District Court's order.

Although appellant admits that the bankruptcy proceeding has been dismissed (Jurisdictional Statement, Page 7), it still contends that "appellant's intention, as demonstrated by its pleadings, is to elect its own board of directors, officers and oust the present management from the control of the debtor." If the corporation were some superior entity belonging to its officers and not its shareholders, this sentence might make some reasonable presentment. As it stands, it is a blatant admission that the complaint is not made by the corporation or by those who own it, but by "present management" to continue their control of the corporation against the wishes of those who own the corporate stock.

Is it the intention of Rule 11-44 to freeze the management of a corporation claiming willingness and hope of presentation of a plan of arrangement with its creditors? This cannot be so. Why would the federal system insist on the maintenance in authority of the officers of the corporation who from December 6, 1976, to November 30, 1977, have struggled to make a plan of arrangement with such ineptness that the Bankruptcy Court on November 30, 1977, dismissed the proceeding for want of prosecution? See full copy of Order of Dismissal attached as Appendix D.

Appellant relies heavily on *In re: Plankinton Building Co.*, 138 F.2d 221 (7th Circuit 1943). The Court in that case stated clearly, "The Court of Bankruptcy has no jurisdiction over the meetings of a debtor in reorganization . . . unless the exercise of such corporation function interferes with the administration of the estate of the Bankruptcy Court."

In re: Bush Terminal Co., 78 F.2d 162 (2d Cir.) involved an appeal from a bankruptcy court injunction against use of a shareholders' list and calling a shareholders' meeting. The Court says:

By Section 77B (forerunner of Chapter X), the debtor is given the right to be heard on all questions. Obviously, the stockholders should have the right to be adequately represented in the conduct of the debtor's affairs, especially in such an important matter as the reorganization of the debtor.

"The orders appealed from both affect the rights of the stockholders of the debtor *in preventing the election of a new board of directors*. They were *improperly granted and are reversed*." (Parentheses and italics supplied)

Chapter X proceedings embrace the possibility of re-arranging matters relative to the stock holdings of the corporation. This would indicate a greater jurisdiction over the shareholders than would be appropriate in a Chapter XI proceeding.

In Chapter XI proceedings, the corporate debtor conducts elections to fill its board of directors and appoints officers pursuant to the state law of its incorporation. *In re: J. P. Linahan, Inc.*, 11 F.2d 590 (2d Cir. 1940); *In re: Nazareth Fair Grounds*, 296 F.2d 685 (2d Cir. 1961); 6A Collier on Bankruptcy, 14th Edition, Paragraph 8.15. State laws regulating annual meetings are mandatory. *Rosenthal v. Leaseway of Texas, Inc.*, 544 S.W.2d 180 (Tex. Civ. App.—Tyler 1976, no writ history).

CONCLUSION

We respectfully submit that the appeal of this case to the Supreme Court is a waste of this Court's time and a continuing gross imposition on those who own the shares of Valley International Properties, Inc.

The case should be immediately affirmed or the appeal dismissed.



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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that true and correct copies of the foregoing Motion to Affirm the Judgment Below or in the Alternative to Dismiss Appeal have been served upon all necessary parties or their attorneys of record by placing same in the United States mail, postage prepaid, this 18 day of January, 1979.



LES COCHRAN

January 18, 1979

APPENDIX A

CAUSE NO. 77-1563-C

IN THE DISTRICT COURT OF
CAMERON COUNTY, TEXAS
197TH JUDICIAL DISTRICT

LOS CAMPEONES, INC.

v.

VALLEY INTERNATIONAL PROPERTIES, INC.

ORDER

ON THE 19th day of August, 1977, in the above styled and numbered cause, wherein LOS CAMPEONES, INC. is Plaintiff, and VALLEY INTERNATIONAL PROPERTIES, INC. is Defendant, came on regularly to be heard the answer of VALLEY INTERNATIONAL PROPERTIES, INC. and its request that the Court cancel its Order for an annual shareholders' meeting, and all parties appeared and announced ready for trial, both sides having consented in open court to the trial of the issues presented by the pleadings herein and having agreed to submit to the Court issues as to Plaintiff's ownership of shares of Defendant. The Court proceeded to hear such answer and request and the responses and exceptions thereto, and the hearing having proceeded from day to day until the 31st day of August, 1977, and both parties having rested their case, and it appearing to the Court that Los Campeones, Inc. is a shareholder of Valley International Properties, Inc., and that no annual shareholders' meeting has been held within thirteen (13) months of the filing of the original appli-

cation herein, AND FURTHER that Los Campeones, Inc. is the owner of 250,661 shares of Valley International Properties, Inc. and that Valley International Properties, Inc. is hereby required to recognize the ownership of said shares

IT IS ACCORDINGLY ORDERED, ADJUDGED AND DECREED by the Court that the Order heretofore entered by this Court in the above styled and numbered cause on July 25, 1977, shall be and the same is hereby modified to the extent that it is contrary or inconsistent with the provisions of this Order;

IT IS THEREFORE ORDERED:

1. A Special Annual Shareholders' Meeting of Valley International Properties, Inc. shall be held in the Los Compadres Ballroom of the Valley International County Club, located at the intersection of Highway 77 at F.M. Road 802, in Cameron County, Texas, in or near the City of Brownsville, Texas, on Monday, September 26, 1977, at 2:00 o'clock P.M.;

2. Los Campeones, Inc. shall give notice to the shareholders of Valley International Properties, Inc. of such meeting, as required by law, within 15 days from date hereof, such notice to be given to such persons as in the opinion of Los Campeones, Inc. are the owners of shares in said Valley International Properties, Inc. and any additional shareholders reflected by a list of shareholders furnished to Los Campeones, Inc. by Joel W. Ellis within 5 days from the date of this Order;

3. A certified copy of this Order shall be served on the Registered Agent of the corporation by mailing to the corporation's registered address; and

4. Except as hereby modified, said Order of July 25, 1977, is hereby continued in full force and effect.

IT IS FURTHER ORDERED that all matters contained herein are subject to the review and approval of the Judge sitting in the proceedings in the District Court of the United States for the Southern District of Texas, Brownsville Division, in Causes in Bankruptcy numbered 76-B-46 and 76-B-47.

SIGNED AND ENTERED this 7th day of September, 1977.

/s/ FILEMON VELA
Judge Presiding

APPENDIX B

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNVILLE DIVISION

BANKRUPTCY NOS. 76-B-46 and 76-B-47

IN RE:

VALLEY INTERNATIONAL PROPERTIES, INC.
and LOS CONQUISTADORES, LTD., Debtors

VALLEY INTERNATIONAL PROPERTIES, INC. and
LOS CONQUISTADORES, LTD., Plaintiffs

v.

BROWNSVILLE SAVINGS AND LOAN ASSOCIA-
TION and LOS CAMPEONES, INC., Defendants

ORDER REVIEWING AND APPROVING
ALLOWING SHAREHOLDERS' MEETING

Came on for consideration the response of Los Campeones, Inc., Defendant herein, seeking specific review by this Court of the Order entered by Judge Filemon Vela in Cause No. 77-1563-C in the District Court of Cameron County, Texas, 197th Judicial District, dated September 7, 1977, and, this Court having considered the arguments of counsel and having reviewed the declaratory portions of that certain Order, a copy of which is annexed hereto as Exhibit "A", finds, after reviewing such Order, that it approves the decretal portions set forth in Paragraphs 1, 2, 3, and 4 of that Order, a true copy of which is hereto annexed. Further, this Court makes no comment or ruling as to the findings set forth in the Order for the reasons that this Court has not

heard the testimony on such matters and does not feel it appropriate to rule upon or review the findings reflected in such Order.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that the Order of the District Court of Cameron County, Texas, 197th Judicial District, entered in Cause No. 77-1563-C, annexed hereto as Exhibit "A", is approved only as to the decretal paragraphs of said Order set forth above.

SIGNED AND ENTERED this 21st day of September, 1977.

/s/ JOHN R. BLINN

John R. Blinn, Bankruptcy Judge

APPENDIX C

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNVILLE DIVISION

BANKRUPTCY NOS. 76-B-46 and 76-B-47

IN RE:

VALLEY INTERNATIONAL PROPERTIES, INC.
and LOS CONQUISTADORES, LTD., Debtors

VALLEY INTERNATIONAL PROPERTIES, INC. and
LOS CONQUISTADORES, LTD., Plaintiffs

v.

BROWNSVILLE SAVINGS AND LOAN ASSOCIA-
TION and LOS CAMPEONES, INC., Defendants

ORDER STRIKING MOTION FOR CONTEMPT

Came on to be heard the Motion for Contempt filed herein by Debtors against Brownsville Savings and Loan Association and Los Campeones, Inc., both sides announcing ready, the Court first considered the motions of Brownsville Savings and Loan Association and Los Campeones, Inc. to strike the Motion for Contempt filed herein by Plaintiffs and the Court having heard oral argument presented to it by counsel for the respective parties and considering the record and premises as contained in the respective Motions to Strike finds that the Motion for Contempt should be stricken, it is accordingly

ORDERED that the Motion for Contempt filed herein and prosecuted herein by Plaintiffs be stricken from the record of this Court and the relief sought therein denied.

SIGNED AND ENTERED this 21st day of September,
1977.

/s/ JOHN R. BLINN

John R. Blinn, Bankruptcy Judge

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

PROCEEDING NO. 76-B-46

PROCEEDING NO. 76-B-47

IN THE MATTER OF
VALLEY INTERNATIONAL PROPERTIES, INC.
and LOS CONQUISTADORES, LTD.
DEBTORS

ORDER OF DISMISSAL

At Houston, in said District, on the 30th day of November, 1977, it appearing to the Court there has been a want of prosecution in the above proceedings, and it being appropriate to act under Bankruptcy Rule 11-42 and the Court being of the opinion that in the interest of the creditors and parties in interest in the above estates, the above styled proceedings under Chapter XI of the Bankruptcy Act should be dismissed, now upon all the proceedings had before me and due deliberation having been had thereon, it is

ORDERED, ADJUDGED and DECREED that these proceedings are dismissed effective 12:00 midnight November 30, 1977, and it is further

ORDERED that the Operating Receiver previously appointed by Order of this Court file his Final Report on or before the 1st day of January, 1978.

Entered this 30th day of November, 1977.

/s/ JOHN R. BLINN
United States Bankruptcy Judge